

United States
Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

VS.

TSURU TOMIMATSU,

Appellee.

In the Matter of the Petition of TSURU
TOMIMATSU for a Writ of Habeas Corpus.

Transcript of Record.

Upon Appeal from the United States District Court for the
Territory of Hawaii.

FILED

DEC 17 1912



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Petitioner, TSURU TOMIMATSU:

GEORGE S. CURRY, Esq., #846 Kaahumanu
Street, Honolulu, Hawaii.

For Respondent, RICHARD L. HALSEY, Esq.,
U. S. Immigration Inspector in Charge at
the Port of Honolulu:

ROBERT W. BRECKONS, Esq., United
States District Attorney, Honolulu, Hawaii.
[1*]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

No. 46.

In the Matter of the Petition of TSURU TOMI-
MATSU, for a Writ of Habeas Corpus.

**Order Extending Time to November 11, 1912, to
Transmit Record on Appeal.**

Now, on this 18th day of October, A. D. 1912, it
appearing from the representations of the clerk of
this court that it is impracticable for said clerk of
this court to prepare and transmit to the clerk of the
Ninth Circuit Court of Appeals, at San Francisco,
California, the transcript of the record on assign-
ment of error in the above-entitled cause, within the
time limited therefor by the citation heretofore is-
sued in this cause, it is ordered that the time within
which the clerk of this court shall prepare and trans-
mit said transcript of the record on assignment of

*Page-number appearing at foot of page of original certified Record.

error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to November 11, 1912.

Honolulu, Hawaii, October 18th, 1912.

CHAS. F. CLEMONS,

Judge United States District Court.

Due service of the above order, and receipt of a copy thereof, are hereby admitted this 18th day of October, A. D. 1912.

THE UNITED STATES OF AMERICA,

Defendant in Error Above Named.

By C. C. BITTING,

Assistant United States District Attorney.

[Endorsed]: #46. In the United States District Court, Territory of Hawaii. In the Matter of the Petition of Tsuru Tomimatsu for a Writ of Habeas Corpus. Order Extending Time to Prepare Record on Appeal. Filed October 18th, 1912, at — o'clock, and — minutes — M. A. E. Murphy, Clerk. By F. L. Davis, Deputy Clerk. [2]

In the District Court of the United States in and for the District and Territory of Hawaii.

No. 46.

In the Matter of the Petition of TSURU TOMIMATSU for a Writ of Habeas Corpus.

Statement.

Time of Commencing Suit:

July 25, 1912: Verified petition for writ of habeas

corpus filed and writ issued to the United States Marshal for the District of Hawaii.

Names of Original Parties:

Petitioner: TSURU TOMIMATSU.

Respondent: RICHARD L. HALSEY, Esq., U. S. Inspector of Immigration in charge at the Port of Honolulu.

Dates of Filing of the Pleadings:

July 25, 1912: Petition.

July 31, 1912: Return of Richard L. Halsey to Order to Show Cause.

September 18, 1912: Return of Richard L. Halsey to Writ of Habeas Corpus.

September 18, 1912: Demurrer to Return to Writ of Habeas Corpus. [3]

Service of Process:

July 25, 1912: Writ issued and delivered to the United States Marshal for the District of Hawaii. Said writ afterwards returned into court with the following return by the said United States Marshal: "The within Petition, Writ of Habeas Corpus and Order were received by me on the 25th day of July, A. D. 1912, and is returned as executed upon Richard L. Halsey, Esq., Immigration Inspector in Charge at the Port of Honolulu, by exhibiting to him the original Petition, Writ of Habeas Corpus and Order on the 26th day of July, A. D. 1912, and, upon his looking at the original writs, he asked when the same was returnable and at what time he was to produce the body of TSURU TOMIMATSU; further service was made by handing

to and leaving with the said Richard L. Halsey certified copy of Petition, Writ of Habeas Corpus and Order on this 26th day of July, A. D. 1912."

July 26, 1912: Order Quashing Service of Writ filed and Order to Show Cause issued and delivered to the United States Marshal for the District of Hawaii. Said Order to Show Cause afterwards returned into court with the following return by the said United States Marshal: "The within ORDER TO SHOW CAUSE was received by me on the 26th day of July, A. D. 1912, and is returned as executed this 26th day of July, A. D. 1912, by hand, upon Richard L. Halsey, Immigration Inspector in Charge at the Port of Honolulu, by exhibiting to him the original Order to Show Cause and handing to and leaving with him a certified copy of Order to Show Cause, and *direct-* that he appear before the United States District Court on the 30th day of July, A. D. 1912 at 10 A. M." [4]

July 30, 1912: Hearing on Order to Show Cause.

September 18, 1912: Hearing on Return to Writ of Habeas Corpus by Immigration Inspector.

The above hearings were had before the Honorable CHARLES F. CLEMONS, Judge of said Court.

Decision:

September 17, 1912: Decision on Order to Show Cause and Order Allowing Writ to Issue.

September 18, 1912: Judgment filed and entered.

September 28, 1912: Petition for Appeal.

United States of America,
District of Hawaii,—ss.

I, A. E. Murphy, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit; the names of the original parties thereto; the several dates when the respective pleadings were filed; and account of the proceedings showing the service of the Order to Show Cause and Writ of Habeas Corpus and the time when the judgment herein was rendered and the Judge rendering the same, in the matter of the Petition of Tsuru Tomimatsu for a Writ of Habeas Corpus, Number 46, in the United States District Court for the Territory of Hawaii. [5]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 3d day of October, A. D. 1912.

[Seal] A. E. MURPHY,
Clerk, United States District Court, Territory of
Hawaii. [6]

*In the District Court of the United States, in and
for the District and Territory of Hawaii.*

In the Matter of the Petition of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

Petition for a Writ of Habeas Corpus.

To the Honorable SANFORD B. DOLE, Judge of
the District Court of the United States in and
for the District and Territory of Hawaii:

The undersigned, Tsuru Tomimatsu, petitioner herein, respectfully represents and shows to this Honorable Court as follows:

I.

That your petitioner is a subject of the Emperor of Japan; that heretofore, to wit, in or about the month of June, A. D. 1902, your petitioner arrived at Honolulu, city and county of Honolulu, in the Territory of Hawaii and United States of America, on board the Japanese steamship "Hong Kong Maru," she having embarked on said steamship in Japan, and thereupon your petitioner was duly admitted to the Territory of Hawaii and United States of America, and since the last-mentioned date has had her domicile in the Island of Maui, in the said Territory of Hawaii:

II.

That prior to the arrival of your petitioner in the Territory of Hawaii and United States of America as aforesaid, she had been duly married, according to the laws of Japan, to one Kotaro Tomimatsu; and that said Kotaro Tomimatsu, the husband of your petitioner, came together with your petitioner on the steamship [7] "Hong Kong Maru," as aforesaid, and was duly admitted to the Territory of Hawaii and United States with your petitioner as aforesaid, and since the last-mentioned date has had his domicile in the Island of Maui, in the said Territory of Hawaii.

III.

That on or about the 16th day of July, A. D. 1906, your petitioner departed from the port of Honolulu

aforesaid, aboard the American steamship "China," bound for the Empire of Japan, to which country petitioner desired to go for a visit and for the purpose of placing her children in school, and upon leaving said port of Honolulu, and at all times thereafter, petitioner intended to return to said Honolulu and to said Island of Maui, and to continue to reside in said Island of Maui; that during your petitioner's intended temporary absence as aforesaid petitioner's husband, said Kotaro Tomimatsu, remained domiciled in the Island of Maui aforesaid, and is now a cane contractor at Puunene, in said Island of Maui.

IV.

That petitioner returned to the port of Honolulu on or about the 10th day of June, A. D. 1912, aboard the American steamship "Mongolia," with the intention of returning to and residing with her said husband on said Island of Maui.

V.

That upon the arrival of your petitioner at the port of Honolulu, on the date last aforesaid, and at all times since the last-mentioned date, Richard L. Halsey, United States Immigration Inspector in Charge at the said port of Honolulu, has refused a landing to your petitioner, as petitioner is informed and believes, and upon such information and belief alleges and avers, under the claim or pretense that your petitioner is an immigrant alien and as such, a person belonging to an excluded class under [8] the Immigration Laws of the United States; whereas, in truth and in fact, your petitioner is a nonimmigrant alien and not subject to said immigration laws.

VI.

And your petitioner further shows that she is held in custody, detained, imprisoned and deprived of her liberty by said Richard L. Halsey, as petitioner is informed and believes and upon such information and belief alleges and avers, under and by virtue of the claim as aforesaid; and your petitioner further shows that said holding in custody, detention and imprisonment is illegal for the reasons hereinabove set forth.

WHEREFORE, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of habeas corpus, to be directed to the said Richard L. Halsey, United States Immigration Inspector in Charge as aforesaid, may issue in this behalf, so that your petitioner may be forthwith brought before this Honorable Court, to do, submit to, and receive what the law may direct.

Dated, Honolulu, July 24, 1912.

her
X

(Sgd.) TSURU mark TOMIMATSU,
Petitioner.

Witness to Mark:

(sgd.) P. H. BURNETT.

(sgd.) GEO. S. CURRY,

Attorney for Petitioner. [9]

United States of America,
Territory of Hawaii,
City and Country of Honolulu,—ss.

And now comes Tsuru Tomimatsu, who being first duly sworn upon her oath, according to law, deposes

and says, that she is the petitioner named in the foregoing petition subscribed by her; that she has heard the same read over to her and knows the contents thereof, and that the matters and things therein set forth and contained are just, true and correct, except as to those matters and things therein alleged on information and belief, and as to them she verily believes them to be true.

her
X

TSURU mark TOMIMATSU.

Witness to mark:

(Sgd.) P. H. BURNETT.

Subscribed and sworn to before me by said Tsuru Tomimatsu, this 24th day of June, A. D. 1912.

[Seal] (Sgd.) P. H. BURNETT,

Notary Public First Judicial Circuit, Territory of Hawaii:

Let the writ issue as herein prayed.

July 25, 1912.

(Sgd.) S. B. DOLE,

Judge of the United States District Court, Hawaii.

[10]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

Writ of Habeas Corpus [Dated July 25, 1912].

THE UNITED STATES OF AMERICA to Richard
L. Halsey, Esq., United States Immigration In-

spector in Charge, at the Port of Honolulu, Territory of Hawaii:

WE COMMAND YOU that the body of TSURU TOMIMATSU, in your custody detained, as it is said, together with the day and cause of her caption and detention, you safely have before the Honorable SANFORD B. DOLE, Judge of our District Court of the United States, in and for the District and Territory of Hawaii, to do and receive all and singular those things which the said Judge shall then and there consider of her in this behalf; and have you then and there this WRIT.

WITNESS the Honorable SANFORD B. DOLE, Judge of the District Court of the United States, in and for the District and Territory of Hawaii, this 25th day of July, A. D. 1912.

[Seal]

(Sgd.) A. E. MURPHY,

Clerk.

United States Marshal's Office.

MARSHAL'S RETURN.

The within Petition, Writ of Habeas Corpus and Order were received by me on the 25th day of July, A. D. 1912, and is returned as executed upon Richard L. Halsey, Esq., Immigration Inspector in Charge at the Port of Honolulu, by exhibiting to him the original Petition, Writ of Habeas Corpus and Order on the 26th day of July, A. D. 1912, and, upon his looking at the original writs, he asked when the same was returnable and at what time he was to produce the body of Tsuru Tomimatsu; further service was made by handing to and leaving with the said Richard

L. Halsey certified copy of Petition, Writ of Habeas Corpus and Order on this 26th day of July, A. D. 1912.

Dated Honolulu, T. H., July 26, 1912.

(Sgd.) E. R. HENDRY,
United States Marshal. [11]

[Endorsed]: No. 46. (Title of Court and Cause.)
Petition and Writ. Honolulu, July 25, 1912. Filed
July 25, 1912. (Sgd.) A. E. Murphy, Clerk. [12]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

To the Honorable SANFORD B. DOLE, Judge of
Said Court:

Comes now the petitioner herein, Tsuru Tomi-
matsu, by her attorney, Geo. S. Curry, and moves
your Honor and this Honorable Court that the ser-
vice of the Writ of Habeas Corpus in this case be
quashed.

TSURU TOMIMATSU.

By (Sgd.) GEO. S. CURRY,

Her Attorney.

Let the service of the Writ of Habeas Corpus made
in this case be quashed.

(Sgd.) S. B. DOLE,
Judge of the United States District Court in and for
the District and Territory of Hawaii.

[Endorsed]: No. 46. (Title of Court and Cause.)
Order Quashing Service of Writ. Honolulu, July 26,

1912. Filed Jul. 26, 1912. A. E. Murphy, Clerk.
F. L. Davis, Deputy Clerk. [13]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

Order to Show Cause.

Upon reading and filing the Petition for a Writ of Habeas Corpus in the above-entitled cause, it is ordered that the respondent herein Richard L. Halsey, do, on Tuesday, the 30th day of July, A. D. 1912, at the hour of 10 o'clock in the forenoon of said day, or as soon thereafter as counsel may be heard, appear before me at the United States District Court, and show cause, if any he has, why the prayer of the petition should not be granted.

(Sgd.) S. B. DOLE,

Judge of the United States District Court, in and for
the District and Territory of Hawaii.

Honolulu, Hawaii, July 26, 1912.

United States Marshal's Office.

MARSHAL'S RETURN.

The within ORDER TO SHOW CAUSE was received by me on the 26th day of July, A. D. 1912, and is returned as executed this 26th day of July, A. D. 1912, by hand, upon Richard L. Halsey, Immigration Inspector in Charge at the Port of Honolulu, by exhibiting to him the original Order to Show Cause and handing to and leaving with him a certified copy of Order to Show Cause, and directing that

he appear before the United States District Court on the 30th day of July, A. D. 1912, at 10 A. M.

Dated, Honolulu, T. H., July 26, 1912.

E. R. HENDRY,

U. S. Marshal.

By (Sgd.) H. H. HOLT,

Office Deputy. [14]

[Endorsed]: No. 46. (Title of Court and Cause.)
Order to Show Cause. Honolulu, July 26, 1912.
Filed Jul. 26, 1912. A. E. Murphy, Clerk. By (Sgd.)
F. L. Davis, Deputy Clerk. [15]

Hearing on Order to Show Cause.

From the Minutes of the United States District
Court, Vol. 8, Page 224, Tuesday, July 30, 1912.
[Title of Court and Cause.]

On this day came Mr. George S. Curry, counsel of the above petitioner, and also came the United States by its District Attorney, Mr. R. W. Breckons, on behalf of R. L. Halsey, United States Inspector of Immigration, respondent herein, and this cause was called for hearing on Petition and Order to Show Cause. Thereupon due argument having been had by respective counsel, the within cause was by the Court taken under advisement. [16]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Application of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

Return of Richard L. Halsey to Order to Show Cause.

The Return of RICHARD L. HALSEY, Esq., United States Immigration Inspector in Charge at the Port of Honolulu, Territory of Hawaii, to the Order to Show Cause hereto attached:

In obedience to the order to show cause heretofore issued in this case, I do hereby certify and return to the Honorable SANFORD B. DOLE, Judge of the above-entitled court, as follows:

First. That I am at present, and have been for three months last past, the United States Inspector of Immigration in charge at the port of Honolulu, in the Territory of Hawaii.

Second. That heretofore and on, to wit, the 10th day of June, A. D. 1912, one Tsuru Tomimatsu arrived at the port of Honolulu, in the District and Territory of Hawaii, by the steamship "Mongolia" from the Empire of Japan.

Third. That subsequent to the arrival of the said Tsuru Tomimatsu at the port of Honolulu, and on the 19th day of June, A. D. 1912, an examination of the physical and mental condition [17] of the said Tsuru Tomimatsu was made by the officer of the United States Marine Hospital Service located at the port of Honolulu, the said medical officer having been theretofore duly and regularly appointed as such officer, and being an officer who, prior to the said examination and prior to the appointment as such officer, had had at least two years' experience in the practice of his profession since receiving the degree of Doctor of Medicine.

Fourth. That upon the completion of the said examination by the said medical officer, the said medical officer did certify in writing, as required by law, that the said Tsuru Tomimatsu was afflicted with a dangerous, contagious disease, to wit, Trachoma; a copy of which said certificate so made being attached hereto, made a part hereof, and marked Exhibit "A."

Fifth. That during all times in the month of June, A. D. 1912, Harry B. Brown, Edwin Farmer and Merlin J. Moore, were a duly appointed, qualified and acting Board of Special Inquiry at the port of Honolulu, in the said Territory and District.

Sixth. That the said certificate so made by the medical officer as aforesaid, was delivered, as by law required, to the said Board of Special Inquiry; that the said Board of Special Inquiry also received*and heard evidence as to whether or not the said Tsuru Tomimatsu had returned to Japan with the intention of returning to Hawaii; that upon receipt of said certificate and upon the hearing of said testimony, the said Board did determine that the said Tsuru Tomimatsu was an alien immigrant afflicted with a dangerous, contagious disease, and that some four or five years prior to the date of said hearing she, the said Tsuru Tomimatsu, had gone from the Territory of Hawaii to Japan with the intention of remaining in Japan and not with the intention of returning to the Territory of Hawaii; and did thereupon duly and regularly order that the said Tsuru Tomimatsu be deported to the [18] country whence she came, to wit, to the Empire of Japan; a copy of the record of the said Board of Special Inquiry being attached thereto,

made a part hereof, and marked Exhibit "B". That the said hearing was full, fair and in every respect in accordance with law, and with the regulations of the Department of Immigration.

Seventh. That when the deportation of the said alien was ordered by the said Board of Special Inquiry, the said Tsuru Tomimatsu was informed thereof, and likewise informed of her right to appeal to the Secretary of Commerce and Labor on the question of whether or not she was an alien immigrant within the meaning of the Immigration Laws of the United States; that thereafter and on the 20th day of June, A. D. 1912, the said Tsuru Tomimatsu appealed from the decision of the said Board to the Secretary of Commerce and Labor at Washington; a copy of the said appeal being hereunto attached and marked Exhibit "C." That later, through her attorney, George S. Curry, she appeared before the Secretary of Commerce and Labor and submitted to the said Secretary a written brief on the question of whether or not she was an alien immigrant within the meaning of the law; a copy of her appearance and brief to the aforesaid Secretary is hereunto attached and marked Exhibit "D."

Eighth. That thereafter and on, to wit, the 18th day of July, A. D. 1912, the said Secretary of Commerce and Labor did duly and regularly deny the appeal of the said Tsuru Tomimatsu and sustained the finding of the said Board of Special Inquiry ordering the deportation of the said Tsuru Tomimatsu.

Wherefore, the said Richard L. Halsey prays that

the Petition heretofore filed in this case be dismissed, and for his costs in this behalf expended.

(Sgd.) RICHARD L. HALSEY. [19]

United States of America,
Territory of Hawaii,—ss.

Richard L. Halsey, being first duly sworn according to law, deposes and says that he is the Richard L. Halsey who has made the return to the order to show cause in the above-entitled cause; that he has read the said return, and knows the contents thereof, and that the facts therein stated are true.

(Sgd.) RICHARD L. HALSEY:

Subscribed and sworn to before me this 31st day of July, A. D. 1912.

[Seal]

(Sgd.) A. E. MURPHY,

Clerk, United States District Court, Territory of
Hawaii. [20]

**Exhibit "A" to Return to Order to Show Cause
[Medical Certificate].**

Form 541.

Department of Commerce
and Labor. Immigration.
Service.

MEDICAL CERTIFICATE.

Port of Honolulu, T. H.

Date June 19, 1912:

Name,—Tsuru Tomomatsu.

Native of Japan.

S. S. MONGOLIA.

Age 35. Sex, Female.

Race, Japanese. Date arrival, June 10, 1912.

Class ———. Manifest No. ———.

THIS IS TO CERTIFY That the above described person has this day been examined, and is found to be afflicted with trachoma, a dangerous contagious disease, which in my opinion could not have been detected at port of embarkation by a competent medical examination and which in my opinion cannot be cured in sixty days.

(Sgd.) F. E. TROTTER, P. A.

Surgeon, Public Health and Marine-Hospital Service. [21]

**Exhibit "B" to Return to Order to Show Cause
[Record of Board of Special Inquiry, U. S.
Immigration Service].**

U. S. IMMIGRATION SERVICE.

Port of Honolulu, T. H.

Record of Board of Special Inquiry, convened June 19, 1912. Members of Board: HARRY B. BROWN, EDWIN FARMER and MERLEN J. MOORE. Case of TSURU TOMIMATSU, N. 1-8, ex. SS. MONGOLIA, June 10, 1912.

Interpreter, Katsunuma.

Applicant, sworn by Inspector FARMER, testifies:

Q. Give your name, age and place of birth.

A. TSURU TOMIMATSU; 35 years old, born at ARAKI MURA, Fukuoka Ken, Japan.

Q. Where have you been living?

A. At MITSUMA MURA, Fukuoka Ken.

Q. Are you traveling alone? A. Yes.

Q. Are you married?

A. Yes. My husband, KÔTARO TOMIMATSU, is living at Puunene, Maui, where he works on a plantation.

Q. How old is he? A. 41 years.

Q. How long has he been in Hawaii?

A. 11 years.

Q. What is his occupation?

A. Plantation laborer.

Q. When were you married?

A. In Dec. 1895, in Japan.

Q. Were either of you ever married more than once? A. No.

Q. Have you any children?

A. Yes, three sons, GIICHI, 15 years old, MASATO, 10 years old, and SHIGEYUKI, 5 years, and one daughter, SUGI, 13 years, all now in Japan, with my husband's father, DENHICHI TOMIMATSU, at MITSUKA MURA.

Q. Where were they born?

A. MASATO and SHIGEYUKI were born in Hawaii. The other two were born in Japan.

Q. Is your husband's mother living?

A. Yes, SATO TOMIMATSU. She is with her husband in Japan.

Q. How many brothers and sisters has your husband?

A. Two brothers, SADAKICHI and SUEKICHI, and two sisters, HATSU GOTO and ASANO TAHARA, all in Japan.

Q. Are your parents living?

A. My mother only, CHIYOI INAMASU, at ARAKI MURA.

Q. How many brothers and sisters have you?

A. Two brothers, SATARI, 49 years old, and NENOKICHI, 47 years, and three sisters, KIKU, 46 years, FUSA SAKAI, 42 years, and TOME

MATSUEDA, 37 years, all in Japan.

Q. Are any of your or your husband's relatives deformed or in any way unsound in mind or body, or have any of them ever been confined in a public institution? A. Not to my knowledge.

Q. Can you read and write? A. No.

Q. On which ship did you arrive and from what port?

Q. On the SS MONGOLIA, June 10, 1912, from Nagasaki, Japan.

Q. Who paid your passage?

A. My husband sent the money for it.

Q. What is your occupation? A. Weaver.

Q. Were you ever in the United States before?

A. Yes, I came to Hawaii 11 years ago with my husband. I stayed here five years and then went back to Japan. I have been there fully four years.

Q. Who went back to Japan with you four years ago?

A. I took with me my two sons, MASATO and SHIGEYUKI. [22]

Q. Have either of those two sons ever returned to Hawaii? A. No.

Q. Was GIICHI or SUGI ever in this country?

A. No.

Q. Have you been engaged in weaving in Japan ever since you went there four years ago?

A. Yes. Nothing but weaving.

Q. What wages did you receive as a weaver in Japan?

A. 75 sen a day to one sen, and boarded myself.

Q. What are your children doing in Japan?

A. GIICHI is a carpenter's apprentice and the others are going to school, except SHIGEYUKI, who is too young.

Q. Has your husband ever been back to Japan since he came here with you 11 years ago? A. No.

Q. What did you do when you were in Hawaii?

A. I did plantation work at Lahaina, Maui.

Q. Do you remember the date on which you went back to Japan?

A. I can not remember the date, but it was in the month of July, and on the SS. CHINA. I have forgotten the year.

Q. Why did you go back to Japan?

A. I wanted to see my children who were in Japan. My husband's parents also wanted to see me, and wanted to help me in the instruction of my children.

Q. When you first came to Hawaii, did you expect to go back to Japan?

A. Yes. I expected to go back to Japan again.

Q. Have you notified any one of your arrival?

A. I sent a wireless message to my husband from the steamer telling him that I was coming.

Q. How much did you pay for it? A. 6 yen.

Q. How much money have you? A. \$5.00.

Q. Have you any further statement to make?

A. No.

Q. When you went back to Japan did you expect to return to Hawaii again? A. Yes.

Q. If you are landed now is it your intention to remain in Hawaii always, or do you expect to return to Japan again?

A. I expect to stay here and work for ten years

and then return to Japan again.

Q. Do all your children expect to come to Hawaii sometime?

A. Yes, they all expect to come. Two of them, GIICHI and SHIGEYUKI are now at Nagasaki being treated for their eyes. When they are cured they will come to Hawaii.

Q. You have said that when you went to Japan four years ago you intended to return again to Hawaii. How long did you intend to stay in Japan?

A. One or two years.

Q. You have now stayed four years. Why did you not return sooner?

A. I waited for GIICHI to get through the grammar school.

her

TSURU X TOMIMATSU.

mark

Witness to mark—T. KATSUNUMA.

Sworn and subscribed to before me this 19th day of June, 1912.

(Sgd.) EDWIN FARMER,
Immigrant Inspector.

The foregoing testimony has been translated by me to the affiant named therein, and before signing the same she acknowledged it to be a correct record and fully understood by her.

(Sgd.) TOMIZO KATSUNUMA,

Interpreter. [23]

Witness, alleged husband, sworn, testifies:

Q. Give your name and age.

A. KOTARO TOMIMATSU; 42 years old.

Q. What is the purpose of your visit here to-day?

A. I come to meet my wife, TSURU TOMIMATSU, who came on the SS. MONGOLIA, June 10.

Q. How old is she? A. 36 years.

Q. When were you married?

A. In 1894, in Japan.

Q. Were either of you ever married more than once? A. No.

Q. Was your wife ever in the United States before?

A. Yes. She came to Hawaii with me when I came in June, 1902, by the SS. HONG KONG MARU.

Q. Have you ever been back to Japan since that time? A. No.

Q. When did your wife go back?

A. In July, 1907, by the SS. CHINA.

Q. Did she go alone?

A. Mr. MIURA, a friend of mine, took her back with my son MASATO.

Q. How many children have you?

A. Three sons, GIICHI, 16 years old, MASATO, 9 years, and SHIGEYUKI, 5 years about, and one daughter, SUGI, 15 years, all in Japan. MASATO was born in Hawaii, but the rest were born in Japan. SHIGEYUKI was born about December, 1907, after my wife went back to Japan.

Q. With whom are they staying in Japan?

A. I do not know. I should have to see my wife to find out. They have been staying with her.

Q. Have your wife and children ever been back to Hawaii since they went away?

A. No, none of them.

Q. Are you wife's parents living?

A. Her mother only, Mrs. Inamasa, at ARAKI MURA, Fukuoka Ken, Japan.

Q. How many brothers and sisters has your wife?

A. She has two brothers, and three sisters, but I do not know their names. They are all in Japan.

Q. Are your parents living?

A. Yes, DENHICHI and SATO TOMIMATSU, at MITSUMA MURA, Fukuoka Ken.

Q. How many brothers and sisters have you?

A. Three brothers SADAKEICHI, 45 years old, SUEKICHI, 38 years old, and IKUJI, about 29 years, and two sisters, HATSU GOTO, 34 years, and ASANO TAHARA, 27 years, all in Japan.

Q. Are any of your or your wife's relatives deformed, or in any way unsound in mind or body, or have any of them ever been confined in a public institution? A. Not to my knowledge.

Q. Who paid your wife's passage to Hawaii?

A. I did.

Q. What has your wife been doing in Japan?

A. Farm work.

Q. What is your occupation?

A. I plant cane on contract at Puunene, Maui.

Q. About how much money do you make?

A. \$1.00 a day or more.

Q. How much money have you saved?

Q. About \$400.00.

Q. Do you live in a camp?

A. Yes, I have one room.

Q. What will your wife do if she is landed?

A. Plantation work.

Q. What did she do before when she was in Hawaii?

A. Plantation work. We were on Lahaina Plantation, Maui, then.

Q. Do you expect to remain permanently in Hawaii, or do you expect to go back to Japan some-time to live?

A. I intend to go back to Japan, my native land, again.

Q. When you go back, do you expect to take your wife with you? A. Yes.

Q. Has that been your intention ever since you came to Hawaii?

A. Yes. After we saved money enough it has been my hope to go back to Japan. [24]

Q. When your wife went back to Japan was it your intention for her to come back again to Hawaii?

A. Yes. She intended to come back to this country after a short visit in Japan.

Q. How long did she intend to stay in Japan?

A. Two or three years. I intended to bring the children here after they had grown.

Q. Do you intend to bring all of your children to Hawaii? A. Yes.

Q. Why didn't they come with your wife?

A. I do not know. I want to talk about that with my wife.

Q. Have you any further statement to make?

A. I want to ask you to please let her land. Also I am expecting my children, so let them come ashore also.

Q. You say your wife intended to stay in Japan

two or three years. It has now been four or five years. Why did she not return sooner?

A. The children were too small.

Q. Have you received any message from your wife since her departure from Japan?

A. I received a letter from Japan, and a wireless message from her, from the boat.

Q. When did you receive the wireless message?

A. June 10.

Q. When did you receive the letter?

A. About two weeks before June 10.

Q. Why did you not come sooner?

A. I missed one boat and so could not come.

Q. Have you any further statement to make?

A. No.

(Sgd.) Japanese Characters.

Sworn and subscribed to before me this 19th day of June, 1912.

(Sgd.) EDWIN FARMER,
Immigrant Inspector.

The foregoing testimony has been translated by me to the affiant named therein, and before signing the same he acknowledged it to be a correct record and fully understood by him.

(Sgd.) TOMIZO KATSUNUMA,
Interpreter.

Case deferred to await the decision of the examining surgeon as to whether applicant is afflicted with disease. [25]

Order of Board Denying Applicant's Admission.

Case of TSURU TOMIMATSU, N. 1-8, ex. SS.
MONGOLIA, June 10, 1912.

Board reconvened June 20, 1912.

Applicant is certified by the examining surgeon of the U. S. P. H. & M. H. S. as being afflicted with TRACHOMA, a dangerous contagious disease.

EDWIN FARMER.—The applicant in this case, according to the testimony, formerly lived in Hawaii, but went back to Japan about four or five years ago with the intention of again returning to Hawaii after an absence of two or three years in Japan. Her husband has been in Hawaii ever since he came to these Islands, ten or eleven years ago, with his wife. If applicant's intention of sometime returning to Hawaii no matter how many years she may have remained in Japan, her husband still being in Hawaii, makes her a resident of Hawaii, it would seem that the intention of both husband and wife to ultimately return to Japan to live would, according to the same reasoning, make them both residents of Japan. I therefore move the applicant be denied admission and returned to Japan, the country whence she came, this decision being based on the certificate of the examining surgeon that she is afflicted with a contagious disease, and that she be allowed to appeal to the Department on the question as to whether or not she is a returning resident and therefore exempt from the Immigration Laws.

By Inspector MOORE.—I second the motion.

HARRY B. BROWN.—It is so ordered.

Applicant is informed that her return passage will

be paid by the steamship company which brought her to Hawaii.

She is also informed of her right of appeal on the question of residence.

(Sgd.) HARRY B. BROWN.

(Sgd.) EDWIN FARMER.

(Sgd.) MERLEN J. MOORE. [26]

Exhibit "C" to Return to Order to Show Cause.
(Notice of Appeal from Decision of Board of
Special Inquiry to Secretary of Commerce and
Labor.)

June 28, 1912.

R. L. Halsey, Esq.,

Inspector in Charge, U. S. I. S.

Honolulu, Hawaii.

Dear Sir:—

Having been notified that I have been denied admission to the United States at the port of Honolulu on my return here, I hereby notify you that I hereby and now appeal from the decision of the Board of Special Inquiry denying me admission to the Secretary of Commerce and Labor, at Washington. My Attorney will file brief for me on this appeal.

Faithfully yours,

her

(Sgd.) TSURU X TOMIMATSU.

mark

Witness to mark—

TOMIZO KATSUNUMA. [27]

**Exhibit "D" to Return to Order to Show Cause
[Appellant's Brief on Appeal to Secretary of
Commerce and Labor.]**

**BEFORE SECRETARY OF COMMERCE AND
LABOR.**

WASHINGTON, D. C.

**APPEAL FROM DECISION OF BOARD OF
SPECIAL INQUIRY, HONOLULU, HA-
WAIL.**

**In the Matter of TSURU TOMIMATSU, Domiciled
Alien.**

**To the Honorable, the Secretary of Commerce and
Labor:**

STATEMENT OF THE CASE:

From the testimony taken in this case it appears that the appellant herein, TSURU TOMIMATSU, was lawfully married to one KOTARO TOMIMATSU, in the Empire of Japan sometime during the month of December, A. D. 1895, and thereafter cohabited together as husband and wife, there being born of the marriage four children in all, two of them born in Japan, and two in the Territory of Hawaii; it further appears that this couple came here from Japan some 11 years ago, and went to live at Lahaina, Maui, where their two children were born, and lived there some years, making that place their home; that some four or five years ago, the wife, the appellant in this case, returned to Japan, with her children, for the purpose of making a short visit, the husband, Kotaro Tomimatsu, remaining here at their home in Lahaina, and has been here ever since, now being located at Puunene, Maui, and engaged in busi-

ness as a cane contractor. It appears that the wife's purpose in going to Japan some four or five years ago was for the purpose of placing the children in a Japanese school, and that the schooling of the children took longer than she expected, since she has overstayed the time she intended to spend in Japan. At any rate she now returns here to her home and husband, and had there not been some trouble with the Doctors in Japan would have brought with her their children; it appears that they will now [28] follow by a later boat. The husband has never left the Territory since he first came here.

The Board of Special Inquiry at the United States Immigration Station at this port has treated this appellant as an alien immigrant and denied her readmission on her return to her home and domicile here, from which finding and decision the said TSURU TOMIMATSU has appealed to your Honor, and now files this, her brief on appeal:

ARGUMENT.

No question is made in this case but that the appellant herein, Tsuru Tomimatsu, was lawfully admitted to the United States some 11 years ago, when she first came here with her husband, and no question is made but that her husband is lawfully in the United States; the appellant therefore does not come within the ruling in the case of *ex parte Patterson*, 166 Fed. 536, where it appeared that the residence of the alien in the United States was during minority, her parents being in a foreign country, and that she never did in fact acquire a domicile here; neither does she come within the ruling in the case of *FUN-*

ARO vs. WATCHORN, 164 Fed. 152, a New York case, where it appeared that the alien had not been lawfully admitted in the first place, and therefore could not acquire a domicile here. The contrary is the case here, the appellant was lawfully admitted here some 11 years ago when she arrived with her husband, and together with her husband established their domicile here.

The real question and the only question at issue in this case is whether this appellant is a returning domiciled alien. A domicile is that place in which a person has voluntarily fixed his abode, not for a mere special or temporary purpose, but with a present intention of making it his permanent home, 14 CYC. 833. But the appellant in this case is a married woman who is not living [29] separate and apart from her husband under any judicial decree of divorce or separation, nor has she been compelled to leave him because of brutal treatment, nor is there shown to be a partial or total incapacity on the part of the husband to acquire a domiciled. Such being the case the domicile of this appellant follows that of her husband.

“The law fixes the domicile of the wife by that of the husband and denies to her during cohabitation the power of acquiring a domicile of her own separate and apart from him.”

Atherton vs. Atherton, 181 U. S. 155.

Cheely vs. Clayton, 110 U. S. 701.

Chambers vs. Prince, 75 Fed. 176.

Burnham vs. Rangeley, 4 Fed. cases 2176.

The query then comes, what is the domicile of the

husband KOTARO TOMIMATSU? From the decision and finding of the Board of Special Inquiry in this case it appears that they have dealt with this case on the assumption that KOTARO TOMIMATSU never established a domicile here, basing it, I presume, on the following two questions and answers: Record, page #4.

“Do you expect to remain permanently in Hawaii, or do you expect to go back to Japan some time to live?

A. I intend to go back to Japan, my native land, again.”

“Has that been your intention ever since you came to Hawaii?

A. Yes, after we saved money enough it has been my hope to go back to Japan.”

And in this connection I desire to draw attention to the following: Record, page #4.

“Do you intend to bring all of your children to Hawaii? A. Yes.”

(Above quotations taken from the testimony of Kotaro Tomimatsu.)

The last question and answer show a present intention of making this Territory his permanent home, his home and his family's home. All that the two former questions and answers show are a floating intention to return to Japan, his domicile of origin at some indefinite period of time in the future, which is not sufficient to enable him to retain his original domicile in Japan. [30]

Domicile is not established by the proof of one or two facts.

“It depends not upon proving particular facts, but whether all the facts and circumstances taken together tending to show that a man has his home or domicile in one place over-balance all the like proofs tending to show it is another.”

Abington vs. North Bridgewater, 23 Pick. 170.

On the one hand, we have the establishment of a home here, a continuous residence here for 11 years, the wife returning here, after a temporary visit abroad, the bringing of the children in a very near future, the statement of the appellant that she expects to be here for 10 years longer at least, in fact, the establishment of a permanent home and place of abode here; and, on the other hand, we have a declaration on the part of Kotaro Tomimatsu that there is a floating intention to return to Japan at some future indefinite period of time. But the authorities do not stop here; they go further:

In Johnson vs. Smith, 43 Mo., at page 501, the Court said: “A man’s domicile is where he has fixed his ordinary dwelling without a present intention of removal, and that domicile may be changed to another notwithstanding the party on his departure may cherish a secret purpose of returning at some indefinite time in the future. Nor does the intent at the time of removal necessarily decide anything since the party’s intentions may change at a subsequent period. He may come to a different mind and fix his dwelling in another locality without any present purpose of leaving it and thus become domicili-

ated there notwithstanding his original purposes.”

In *Preston vs. Culbertson*, 58 Calif., at page 210, the Court said: “That he intended at some indefinite time in the future to remove (return) to Poverty Hill in Jamestown precinct did not make the latter place his residence.”

Plaintiff was born in New York, removed to New Jersey in 1868, resided there until his wife died in 1880, then took his children to *Scotland*. On return to the United States located in New Jersey, lived there, boarding until 1884, when he went to St. Louis where he engaged as a contractor, entering into a partnership with the defendant. Then closed his business in New Jersey. After living in St. Louis 2 years he sued in the Federal Court for a dissolution of the partnership, *allegeding* that he was a citizen of New Jersey, testifying that his residence in Missouri was merely temporary [31] and it was not his purpose to give up his residence in New Jersey: HELD, that the facts set out did establish residence in Missouri, and that they were not overcome by a secret purpose to return to New Jersey when his business in Missouri was cleaned up, at some indefinite future period. Plea to jurisdiction sustained and bill dismissed. *Wright vs. Schneider*, 32 Fed. 705.

“The place to which a person has removed with the intent to remain there an indefinite time and has his place of present domicile is his place of domicile although he may entertain a floating intention to return at some future

period." *Harris vs. Firth*, 11 Fed. cases, #6120.

A citizen of Massachusetts removed with his family to another State retaining no dwelling place in Massachusetts, though retaining his place of business here and intending to retain his domicile here and to return here at some future indefinite period of time, has NO DOMICILE IN MASSACHUSETTS:

Holmes vs. Greene, 75 Mass. 299, and at page 300-301, the Court said in part:

"It is true that in cases where the domicile of a party is in issue evidence of his intent may have an important and decisive bearing on the question, but it must be in connection with other facts to which the intent of the party gives efficacy and significance. Such is the case where a person has two dwelling houses in different towns in each of which he lives with his family an equal portion of the year. *Harvard College vs. Gore*, 5 Pick. 370. So, too, where a person leaves the country to be absent for purposes of business or pleasure for an indefinite period retaining his house and furniture in the place of his previous residence. *Sears vs. Boston*, 1 Met. 250. But no case can be found where the domicile of a party has been made to depend on a bald intent unaided by other proof. The *factum* and *animus* must concur in order to establish domicile. *Harvard College vs. Gore*, Pick. 570. The latter may be inferred from proof of the former, but evidence of a mere in-

tent cannot establish the fact of domicile.

One who is absent from and resides out of the commonwealth retaining no dwelling-house or boarding place here, though intending to return at some future indefinite time, has no domicile here.

Sleeper vs. Paige, 81 Mass. 349.

If a person has actually removed to another place with the intention of remaining there an indefinite time and has a place of fixed domicile, that place is to be deemed his place of domicile notwithstanding he may entertain a floating intention to return at some future period.

Anderson vs. Anderson, 42 Vt. 350.

Fram vs. Thorman, 102 Wisc. 653.

From these authorities there can be no question but that the husband Kotaro Tomimatsu, who came here 11 years ago, is still living here, and whose further stay here is indefinite and [32] who has a place of fixed domicile at Puunene, Maui,—is domiciliated here, and it being established by unbroken authority that the domicile of the wife follows that of the husband in a case such as this one, the domicile of the wife therefore is in the Territory of Hawaii. The major question being disposed of and it having been shown that this woman, the appellant herein, is a returning domiciled alien, is she amenable to the United States Immigration Laws on her return here from a visit abroad? I believe that under the following authorities she is clearly and beyond a doubt entitled to a landing on her return here:

Rogers vs. United States, 152 Fed. 346.

In re Blehsbaum, 141 Fed. 221.

United States vs. Aultman, 143 Fed. 922.

In re Panzara, 51 Fed. 275.

In re Martorelli, 63 Fed. 437.

In re Maiola, 67 Fed. 114.

United States vs. Sandrey, 48 Fed. 550.

In re Ota, 96 Fed. 487.

United States vs. Burke, 99 Fed. 895.

In re Di Simmons, 108 Fed. 942.

Mofitt vs. United States, 128 Fed. 375.

United States vs. Nakashima, 160 Fed. 843.

The latter case, United States vs. Nakashima, arose in this jurisdiction, and was decided both in the District Court here, and in the Circuit Court of Appeals of the Ninth Circuit, in favor of the returning domiciled alien, and against the United States, and settles the law in this jurisdiction. Under the law as laid down in the Nakashima case this appellant is clearly and beyond a doubt entitled to a landing here now on her return.

It may be further noted that the Department by its own rules has recognized and follows the case of U. S. vs. Nakashima, 160 Fed. 843, statistical rule VIII, providing:

“Alien residents and aliens residing abroad coming to the United States for a temporary trip, shall be classed as nonimmigrant aliens.
. . . ”

It having been shown that the appellant here established a domicile in the United States, and was a domiciled alien in 1907 [33] when she left this

country for a temporary visit to Japan, intending to return here again to her husband, that it is her intention to bring all of her children here to live with herself and her husband, and it having been further shown that the domicile of the husband of appellant has been in the United States for and during the last 11 years and still continues, and even though the appellant in fact intended to abandon her domicile here by her return to Japan in 1907 (and I submit there was no abandonment by this act), she did not have the power to do so, her domicile following that of her husband, and under the authorities cited, even though the appellant and her husband Kotaro intend at some indefinite future period to return to Japan, such bald intent is not sufficient to defeat the domicile here, established by their past acts, and continued by their present contemplated acts.

I submit, therefore, that beyond all question the appellant is a returning domiciled and non-immigrant alien, and as such entitled to a landing.

Dated, Honolulu, Hawaii, June 25, 1912.

Respectfully submitted,

TSURU TOMIMATSU,

By GEO. S. CURRY,

Her Attorney.

[Endorsed]: No. 46. (Title of Court and Cause.)
Return of Richard L. Halsey to Order to Show
Cause. Filed Jul. 31, 1912. (Sgd.) A. E. Murphy,
Clerk. [34]

**Minutes Re Decision on Order to Show Cause and
Order Allowing Writ to Issue, etc.**

From the Minutes of the United States District
Court, Vol. 8, Page 258, Tuesday, September
17, 1912.

[Title of Court and Cause.]

On this day came the above petitioner in person with her counsel, Mr. George S. Curry, and also came Mr. C. C. Bitting, Assistant United States District Attorney, on behalf of the respondent herein, Richard S. Halsey, and this cause was called for decision on Order to Show Cause. Thereupon the Court read its decision allowing the Writ to issue herein. Thereafter, pursuant to the said Writ, petitioner was brought into court and upon motion of Mr. Curry it was by the Court ordered that this cause be continued to September 18, 1912, at 10 o'clock A. M., for further disposition, and that the said petitioner be remanded to custody of the respondent.

[35]

[Decision on Order to Show Cause.]

*In the United States District Court for the Terri-
tory of Hawaii.*

APRIL, A. D. 1912, TERM.

In the Matter of the Application of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

September 17, 1912.

*Right of alien to land claimed on the ground
of domicil — Denial on a question of law —*

Habeas corpus.—Where the right of an alien to enter the United States is claimed on the ground of domicil, a denial thereof by the immigration officers on a question of law may be reviewed on an application for a writ of habeas corpus.

Jurisdiction of immigration officers—Habeas corpus.—When proceedings before immigration authorities show that they have acted without jurisdiction, relief may be had by writ of habeas corpus.

Domicil—Residence—Intention.—Residence in a certain locality for a period of years with one's family and the conduct of regular employment there, will prevail on the question of domicil, over any floating purpose such person may entertain to return at some indefinite future time to a former place of residence to reside.

Same—Married woman—Temporary residence away from home.—Temporary residence of a married woman away from home cannot, in ordinary circumstances, be set up against the presumption of law that the domicil of the husband is the domicil of the wife.

Resident alien returning to United States after temporary absence.—An alien who has acquired a domicil in the United States cannot be treated as an immigrant on his return to the United States after a temporary absence not involving a change of domicil. [36]

Construction of statutes as affected by revision or amendment.—Authoritative construction of a statute holds good as to a revision or amendment

thereof when the features which have been so construed remain substantially unchanged and do not suggest, in the revision or amendment, any intention of the legislature to change them.

PETITION FOR A WRIT OF HABEAS CORPUS
AND ORDER TO SHOW CAUSE.

G. R. CURRY, Attorney for Petitioner.

ROBERT W. BRECKONS, U. S. District Attorney, and C. C. BITTING, for Respondent.

Upon the filing of the petition an order was made for the respondent, Richard L. Halsey, alleged immigration inspector at the port of Honolulu, to show cause why the prayer of the petition should not be granted. The respondent admitted in his return that he was such immigration inspector and that the petitioner arrived in Honolulu, as alleged in her petition, June 10, 1912, in the steamship "Mongolia" from Japan, and further stated that the petitioner was found to be afflicted with the disease known as trachoma, and the matter was then referred to the board of special inquiry, which board took testimony upon the question "whether or not the said Tsuru Tomimatsu had returned to Japan with the intention of returning to Hawaii," and thereupon reached the conclusion that she "was an alien immigrant afflicted with a dangerous contagious disease, and that some four or five years prior to the date of the said hearing she . . . had gone from the Territory of Hawaii to Japan with the intention of remaining in Japan and not with the intention of returning to the Territory of Hawaii; and did thereupon duly

and regularly order that [37] the said *tsuru* Tomimatsu be deported." The respondent further stated that the petitioner took an appeal to the Secretary of Commerce and Labor, and, through her attorney, submitted a brief in the proceedings on appeal on the question "whether or not she was an alien immigrant within the meaning of the immigration laws of the United States"; and that the Secretary of Commerce and Labor sustained the finding of the board of special inquiry.

The exhibits attached to the return include a copy of the oral testimony of the petitioner and of her alleged husband, taken before the board of special inquiry. No other testimony appears to have been received except the certificate of the medical examiner that the petitioner was afflicted with trachoma, which in his opinion could not have been detected at the port of embarkation by a competent medical examination and could not be cured in sixth days. The testimony of the petitioner and Kotaro Tomimatsu, her alleged husband, tells a story of an industrious and thrifty family coming to this country about ten years ago in order to improve their financial opportunities, leaving two children in Japan. Two more children were born here, or, according to the recollection of Kotaro, one was born here and another after the wife reached Japan upon her return there five years ago, at which time she made the trip because, as she says, "I wanted to see my children who were in Japan. My husband's parents also wanted to see me and wanted to help me in the instruction of my children." On the question

whether or not the petitioner was an alien immigrant, the testimony is as follows: Tsuru Tomimatsu: Q. "When you first came to Hawaii did you expect to go back to Japan?" A. "Yes. I expected to go back to Japan again." Q. "If you are landed now is it your intention to remain in Hawaii always, or do you expect to return to Japan again?" A. "I expect to stay here and work for ten years and then return to Japan again." Q. "Do all of your children expect to come to Hawaii sometime?" A. "Yes, they [38] all expect to come." Q. "You have said that when you went to Japan four years ago you intended to return again to Hawaii. How long did you intend to stay in Japan?" A. "One or two years." Q. "You have now stayed four years. Why did you not return sooner?" A. "I waited for Giichi to get through the grammar school." Kotaro Tomimatsu: Q. "Do you expect to remain permanently in Hawaii, or do you expect to go back to Japan sometime to live?" A. "I intend to go back to Japan, my native land, again." Q. "When you go back, do you expect to take your wife with you?" A. "Yes." Q. "Has that been your intention ever since you came to Hawaii?" A. "Yes. After we saved money enough it has been my hope to go back to Japan." Q. "When your wife went back to Japan was it your intention for her to come back again to Hawaii?" A. "Yes. She intended to come back to this country after a short visit in Japan." Q. "How long did she intend to stay in Japan?" A. "Two or three years. I intended to bring the children here after they had grown." Q. "You say your wife in-

tended to stay in Japan two or three years. It has now been four or five years. Why did she not return sooner?" A. "The children were too small." There is considerable other testimony. I have given that portion which bears most directly upon the point at issue. In the rest, not given, there is nothing that is inconsistent with the above. Upon the testimony and the medical certificate the board of special inquiry rendered the following decision:

"Edwin Farmer: The applicant in this case, according to the testimony, formerly lived in Hawaii, but went back to Japan about four or five years ago with the intention of again returning to Hawaii after an absence of two or three years in Japan. Her husband has been in Hawaii ever [39] since he came to these islands, ten or eleven years ago, with his wife. If applicant's intention of sometime returning to Hawaii no matter how many years she may have remained in Japan, her husband still being in Hawaii, made her a resident of Hawaii, it would seem that the intention of both husband and wife to ultimately return to Japan to live would, according to the same reasoning, make them both residents of Japan. I therefore move the applicant be denied admission and returned to Japan, the country whence she came, this decision being based on the certificate of the examining surgeon that she is afflicted with a dangerous disease, and that she be allowed to appeal to the Department on the question as to whether or not she is a returning resident and

therefore exempt from the immigration laws.

By Inspector Moore: I second the motion.

Harry E. Brown: It is so ordered."

It is recognized by all the authorities that a Court having jurisdiction in proceedings for writs of habeas corpus may not interfere with the decisions of a board of special inquiry or of the Secretary of Commerce and Labor on appeal from such board, in cases touching the right of aliens to land in the United States wherever such board is dealing with issues of fact within its jurisdiction, and the alien has had an opportunity to be present at the hearing and to introduce testimony. *Chin Yow vs. United States*, 208 U. S. 8, 13; *United States vs. Sprung*, 187 Fed. 903, 906; *United States vs. Ju Toy*, 198 U. S. 253, 262. Where, however, the right of a person to enter the United States is claimed on the ground of citizenship or domicile and is denied by the immigration officers, it may be reviewed by such court on application for a writ of habeas corpus, when it depends upon a question of law. *United States vs. Williams*, 173 Fed. 627; *Davis vs. Manolis*, 179 Fed. 818, 822; *School or Magnetic Healing vs. McAnnulty*, 187 U. S. 94, 107-108. [40]

The petitioner does not contest the statement of the medical certificate that she was afflicted with trachoma. Her claim of a right to land is based upon the testimony given above of the established domicile of herself and her husband in Hawaii some ten years before, of her return to Japan four or five years before in relation to the welfare of her children with the intention of returning to Hawaii. The answer

recites that the board of special inquiry took testimony "as to whether or not the said Tsuru Tomimatsu had gone to Japan with the intention of returning to Hawaii," and thereupon and with the statement of the medical certificate, determined that she was an alien immigrant afflicted with a dangerous contagious disease, that four or five years prior thereto, she had gone to Japan with the intention of remaining there, and ordered her deportation to Japan. The decision of the board of special inquiry, exhibited, admits that the petitioner went to Japan with the intention of returning to Hawaii in two or three years, and decides for her deportation upon the following curious reasoning: "If applicant's intention of sometime returning to Hawaii, no matter how many years she may have remained in Japan, her husband still being in Hawaii, maked her a resident of Hawaii, it would seem that the intention of both husband and wife to ultimately return to Japan to live would, according to the same reasoning, make them both residents of Japan."

With this disposal of the case by the board of special inquiry upon a question of law, the authority of this Court to review its decision, under habeas corpus proceedings, accrues.

"It remains, therefore, the sole duty of the Court to determine whether or not the proceedings for the deportation of the relator have been according to law. If they have, he must be remanded; if they have not he must be released."

United States vs. Sibray, 178 Fed. 144, 147.

The testimony, which is not only uncontradicted but unquestioned by the petitioner, shows that husband and wife had acquired a domicil in Hawaii. Acts indicative of an intention of one to take up his abode in a certain locality for a period of years, together with his actual residence in such locality, "must prevail over any secret purpose which he may have entertained to return at some indefinite future time" to a former place of residence and make that his home. *Wright vs. Snyder*, 32 Fed. 705, 706; *Holmes vs. Green*, 73 Mass. 299, 301. Under such circumstances, the temporary return of the wife to Japan, obviously for family reasons, could not destroy her domicil in Hawaii. That such visit was of a temporary nature is shown both by the testimony and her return to Hawaii.

"Actual residence—residence in point of fact, signifies nothing in the case of a married woman, and shall not, in ordinary circumstances, be set up against the presumption of law that she resides with her husband." *Warrender vs. Warrender*, 9 Bligh. N. S. 89, 104: 5 Eng. Reprint, 1227, 1233; *Re Daly's Settlement*, 25 Beav. 456, 460: 53 Eng. Reprint, 711, 713; *Dolphin vs. Robins*, 7 H. L. C. 390; 11 Eng. Reprint, 156.

If this reasoning is correct, the petitioner comes under the rule established in many federal decisions to the effect that "an alien who has acquired a domicil in the United States cannot thereafter, and while still retaining such domicil, legally be treated as an immigrant on his return to this country after a temporary absence for a specific purpose, not involving

a change of domicil." *Rodgers vs. United States ex rel. Buchsbaum*, 152 Fed. 346, syl. (1907), and *United States vs. Aultman & Company*, 143 Fed. 922 (1907).

Although the act "to regulate the immigration of aliens into the United States," approved March 3, 1903, was repealed, except as to section 34, relative to another subject, by the [42] act of February 20, 1907, bearing the same title, the decisions under former statutes upon this point apply as well to the later statute, whose object as expressed by the title is to regulate the immigration of aliens into the United States. This object is borne out by the consistent expression of the statute throughout, and by the constant appearance and repetition of words and sentences that are inconsistent with any other purpose. For instance, the taxes collected from aliens entering the United States are constituted a permanent appropriation called the "immigrant fund," to be used for the "expenses of regulating the immigration of aliens into the United States." Sec. 1. The "immigrant fund" is also referred to in sections 19, 20, 24 and 39. Section 3 relates to the importation of any alien woman or girl for the purpose of prostitution. Sections 4, 5 and 6 deal with the "importation or migration" of contract laborers. Section 7 forbids transportation companies from soliciting or encouraging the "immigration of any aliens." Section 8 provides punishment for anyone who may land any alien not admitted by an "immigrant inspector" in the United States. Sections 12, 14, 19, 22, 24, 25, 32, 36 and 40 refer to the "Com-

missioner General of Immigration," who by virtue of section 22, has charge of all laws relating to the "immigration of aliens." Sections 12, 14, 15, 16, 17, 18, 22, 24 and 25 refer to "immigration officers." Section 24 refers to "immigrant inspectors and other immigration officers." Section 25 provides for boards of special inquiry "for the prompt determination of all cases of immigrants detained under the provision of law." Sections 30, 31 and 40 refer to "immigrant stations," and authorize the President to negotiate treaties for regulating the "immigration of aliens to the United States." Section 40 provides for a "division of information in the Bureau of Immigration and Naturalization to promote beneficial distribution of aliens admitted into the United States among the several States and Territories [43] desiring immigration." Section 42 treats of the accomodation to be given "immigrant passengers" on vessels bringing them to the United States. The word "alien" is used substantially as it is used in the previous statutes; only once is the phrase "alien immigrant" used in the act of 1891, and not at all in the act of 1903.

There appears little room for argument that the numerous authorities that support the construction that the restrictive measures of the acts of 1891 and 1903 do not apply to alien residents of the United States, do not support the same construction of the act of 1907.

An additional ground of jurisdiction of this court in this case is suggested by the case of *Ex parte*

Watchorn, 160 Fed. 1014, 1016, in which the Court says, "Doubtless the determination of the immigration authorities upon all questions of fact, even if made upon legally incompetent or inconclusive evidence, is final, but when the proceedings before them show undisputably that they are acting without jurisdiction, relief may be had by writ of habeas corpus and refers to Gonzales vs. Williams, 192 U. S. 1.

The writ prayed for may issue.

(Sgd.) SANFORD B. DOLE,
Judge, U. S. District Court.

[Endorsed]: No. 46. (Title of Court and Cause.)
Decision of Dole, J. On Motion to Show Cause.
Filed Tuesday, September 17, 1912. A. E. Murphy,
Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [44]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of TSURU TOM-
IMATSU, for a Writ of Habeas Corpus.

Writ of Habeas Corpus Dated September 17, 1912].
THE UNITED STATES OF AMERICA, to
RICHARD L. HALSEY, Esq., United States
Immigration Inspector in Charge, at the Port of
Honolulu, Territory of Hawaii:

We command you that the body of TSURU TOM-
IMATSU, in your custody detained, as it is said, to-
gether with the day and cause of her caption and
detention, you safely have before the Honorable
SANFORD B. DOLE, Judge of our District Court

of the United States, in and for the district and Territory of Hawaii, on the 17th day of September, A. D. 1912, at the hour of 4 o'clock in the afternoon of said day, to do and receive all and singular those things which the said Judge shall then and there consider of her in this behalf; and have you then and there this WRIT:

Witness the Honorable SANFORD B. DOLE, Judge of the District Court of the United States, in and for the District and Territory of Hawaii, this 17th day of September, A. D. 1912.

[Seal]

A. E. MURPHY,
Clerk.

By (Sgd.) F. L. Davis,
Deputy Clerk. [45]

United States Marshal's Office.

MARSHAL'S RETURN.

The within WRIT OF HABEAS CORPUS was received by me on the 17th day of September, A. D. 1912, and is returned as executed upon Richard L. Halsey, Esq., U. S. Immigration Inspector in Charge at the Port of Honolulu, by handing to and leaving with him a certified copy of the within Write of Habeas Corpus and directing that he produce the body of TSURU TOMIMATSU before the United States District Court at Honolulu at 4 P. M., on the 17th day of September, A. D. 1912.

Dated, Honolulu, September 17, 1912.

E. R. HENDRY,
U. S. Marshal.

By (Sgd.) H. H. HOLT,
Chief Office Deputy.

[Endorsed]: No. 46. (Title of Court and Cause.)
Writ of Habeas Corpus. Dated, Honolulu, Hawaii,
September 17, 1912. Filed Sep. 17, 1912. A. E.
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy
Clerk. [46]

Order in Re Release of Petitioner, etc.

From the Minutes of the United States District
Court, Vol. 8, Page 259, Wednesday, September
18, 1912.

[Title of Court and Cause.]

On this day came the above petitioner in person
and with her counsel, Mr. George S. Curry, and Mr.
R. W. Breckons, United States District Attorney,
who appeared on behalf of the respondent herein,
Richard L. Halsey, and this cause was called for fur-
ther disposition. Thereupon and pursuant to the
decision heretofore filed herein, the Court ordered
that said petitioner be released from custody, where-
upon Mr. Breckons having noted an objection to said
ruling and having given notice of an appeal herein,
the Court ordered that pending appeal, petitioner
should give a bond herein in the sum of \$500 for her
appearance to answer the final mandate of this Court,
Judgment having been presented herein and signed
by the Court, the sureties on the above bond were
called, sworn and accepted as such by the Court.
[47]

In the District Court of the United States in and for the District and Territory of Hawaii.

In the Matter of the Petition of TSURU TOMIMATSU for a Writ of Habeas Corpus.

Judgment.

At the regular April, A. D. 1912, term of the District Court of the United States in and for the District and Territory of Hawaii, held in the courtroom of said court, in Honolulu, City and County of Honolulu, in the Territory of Hawaii and District aforesaid, on Wednesday, the 17th day of September, A. D. 1912, the above-entitled cause having heretofore been heard on the pleadings and arguments by counsel for the respective parties and due deliberation had thereon, the Court finds that the above-named petitioner Tsuru Tomimatsu is entitled to be discharged, subject to the taking of an appeal, in which case she may be released upon giving a recognizance with sureties in the sum of Five Hundred Dollars (\$500.00) to answer the judgment of the Appellate Court.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-named petitioner TSURU TOMIMATSU be and she is hereby discharged from custody herein subject to the taking of an appeal, and subject to exceptions by the United States of America.

And the Court being advised that the above-entitled cause will be removed to the Appellate Court by proper proceedings to be had in that behalf.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the above-named petitioner TSURU TOMIMATSU, give her recognizance with surety, in the sum and amount of Five Hundred Dollars (\$500.00), to answer the judgment of the Appellate Court, and that [48] upon the giving of such recognizance the said petitioner, TSURU TOMIMATSU, be released from custody.

GIVEN, MADE AND DATED, at Honolulu, City and County of Honolulu, Territory and District aforesaid, this 18th day of September, A. D. 1912.

(Sgd.) S. B. DOLE,
Judge of said Court.

[Endorsed]: No. 46. (Title of Court and Cause.) Judgment. Entered in J. D. Book 2, at page 363. Dated, September 18, 1912. Filed Sep. 18, 1912. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [49]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of TSURU TOMIMATSU for a Writ of Habeas Corpus.

Return of Richard L. Halsey to the Writ of Habeas Corpus.

The Return of RICHARD L. HALSEY, Esq., United States Immigration Inspector in Charge at the Port of Honolulu, Territory of Hawaii, to the writ of habeas corpus hereto attached:

In obedience to the writ of habeas corpus heretofore issued in this case, I do hereby certify and re-

turn to the Honorable SANFORD B. DOLE, Judge of the above-entitled court, as follows:

First. That I am at present, and have been for three months last past, the United States Inspector of Immigration in charge at the port of Honolulu, in the Territory of Hawaii.

Second. That heretofore and on, to wit, the 10th day of June, A. D. 1912, one TSURU TOMIMATSU arrived at the port of Honolulu, in the District and Territory of Hawaii, by the steamship "Mongolia" from the Empire of Japan.

Third. That subsequent to the arrival of the said TSURU TOMIMATSU at the port of Honolulu, and on the 19th day of June, A. D. 1912, an examination of the physical and mental condition of the said TSURU TOMIMATSU was made by the officer of the United States Marine Hospital Service located at the port of Honolulu, the said medical officer having been heretofore duly [50] and regularly appointed as such officer, and being an officer who, prior to the said examination and prior to the appointment as such officer, had had at least two years' experience in the practice of his profession since receiving the degree of Doctor of Medicine.

Fourth. That upon the completion of the said examination by the said medical officer, the said medical officer did certify in writing, as required by law, that the said TSURU TOMIMATSU was afflicted with a dangerous contagious disease, to wit, Trachoma; a copy of which said certificate so made being attached hereto, made a part hereof, and marked exhibit "A."

Fifth. That during all times in the month of

June, A. D. 1912, HARRY B. BROWN, EDWIN FARMER and MERLIN J. MOORE, were a duly appointed, qualified and acting Board of Special Inquiry at the port of Honolulu, in the said Territory and District.

Sixth. That the said certificate so made by the medical officer as aforesaid, was delivered, as by law required, to the said Board of Special Inquiry; that the said Board of Special Inquiry also received and heard evidence as to whether or not the said TSURU TOMIMATSU had returned to Japan with the intention of returning to Hawaii; that upon receipt of said certificate and upon the hearing of said testimony, the said Board did determine that the said TSURU TOMIMATSU was an alien immigrant afflicted with a dangerous, contagious disease, and that some four or five years prior to the date of said hearing she, the said TSURU TOMIMATSU, had gone from the Territory of Hawaii to Japan with the intention of remaining in Japan and not with the intention of returning to the Territory of Hawaii; and did thereupon duly and regularly order that the said TSURU TOMIMATSU be deported to the country whence she came, to wit, to the Empire of Japan; a copy of the record of the said Board of Special Inquiry being attached thereto, made a part hereof, and marked exhibit [51] "B." That the said hearing was full, fair and in every respect in accordance with law, and with the regulations of the Department of Immigration.

Seventh. That when the deportation of the said alien was ordered by the said Board of Special In-

quiry, the said TSURU TOMIMATSU was informed thereof, and likewise informed of her right to appeal to the Secretary of Commerce and Labor on the question of whether or not she was an alien immigrant within the meaning of the Immigration Laws of the United States; that thereafter and on the 20th day of June, A. D. 1912, the said TSURU TOMIMATSU appealed from the decision of the said Board to the Secretary of Commerce and Labor at Washington; a copy of the said appeal being hereunto attached and marked exhibit "C." That later, through her attorney, GEORGE S. CURRY, she appeared before the Secretary of Commerce and Labor and submitted to the said Secretary a written brief on the question of whether or not she was an alien immigrant within the meaning of the law; a copy of her appearance and brief to the aforesaid Secretary is hereunto attached and marked exhibit "D."

Eighth. That thereafter and on, to wit, the 18th day of July, A. D. 1912, the said Secretary of Commerce and Labor did duly and regularly deny the appeal of the said TSURU TOMIMATSU and sustained the finding of the said Board of Special Inquiry ordering the deportation of the said TSURU TOMIMATSU.

WHEREFORE, the said RICHARD L. HALSEY prays that the writ of habeas corpus heretofore issued in this cause be discharged, and for his costs in this behalf expended.

(Sgd.) RICHARD L. HALSEY. [52]

United State of America,
Territory of Hawaii,—ss.

Richard L. Halsey, being first duly sworn, according to law, deposes and says that he is the Richard L. Halsey who has made the return to the writ of habeas corpus in the above-entitled cause; that he has read the said return, and knows the contents thereof, and that the facts therein stated are true.

(Sgd.) RICHARD L. HALSEY.

Subscribed and sworn to before me this 18th day of September, A. D. 1912.

[Seal] (Sgd.) F. L. DAVIS,
Deputy Clerk, United States Circuit Court, Territory
of Hawaii.

Exhibit "A" to Return to Writ of Habeas Corpus
[Medical Certificate].

Form 541

Department of Commerce
and Labor. Immigration
Service.

MEDICAL CERTIFICATE.

Port of Honolulu, T. H.

Date June 19, 1912.

Name,—Tsuru Tomimatsu

Native of Japan.

S. S. MONGOLIA

Age, 35. Sex, Female.

Race, Japanese. Date of arrival, June 10, 1912.

Class ——— Manifest No. ———

THIS IS TO CERTIFY that the above described person has this day been examined, and is found to

be afflicted with trachoma, a dangerous contagious disease, which in my opinion could not have been detected at port of embarkation by a competent medical examination and which in my opinion can not be cured in *sixth* days.

(Sgd.) F. E. TROTTER, P. A.

Surgeon,

Public Health and Marine-Hospital Service. [53]

**Exhibit "B" to Return to Writ of Habeas Corpus
[Record of Board of Special Inquiry, U. S.
Immigration Service].**

U. S. IMMIGRATION SERVICE.

Port of Honolulu, T. H.

Record of Board of Special Inquiry, convened
June 19, 1912.

Members of Board: HARRY B. BROWN, EDWIN FARMER and MERLIN J. MOORE, Case of TSURU TOMIMATSU, N. 1-8, ex. SS. MONGOLIA, June 10, 1912.

Interpreter, KATSUNUMA.

Applicant, sworn by Inspector FARMER, testifies:

Q. Give your name, age and place of birth.

A. TSURU TOMIMATSU, 35 years old, born at ARAKI MURA, Fukuoka Ken, Japan.

Q. Where have you been living?

A. At MITSUMA MURA, Fukuoka Ken.

Q. Are you traveling alone? A. Yes.

Q. Are you married?

A. Yes. My husband, KOTARO TOMIMATSU, is living at Puunene, Maui, where he works on a plantation.

Q. How old is he? A. 41 years.

Q. How long has he been in Hawaii?

A. 11 years.

Q. What is his occupation?

A. Plantation laborer.

Q. When were you married?

A. In Dec. 1895, in Japan.

Q. Were either of you ever married more than once? A. No.

Q. Have you any children?

A. Yes, three sons, GIICHI, 15 years old, MASATO, 10 years old, and SHIGEYUKI, 5 years, and one daughter, SUGI, 13 years all now is Japan, with my husband's father, DENHICHI TOMIMATSU, at MITSUKA MURA.

Q. Where were they born?

A. MASATO and SHIGEYUKI were born in Hawaii. The other two were born in Japan.

Q. Is your husband's mother living?

A. Yes, SATO TOMIMATSU. She is with her husband in Japan.

Q. How many brothers and sisters has your husband?

A. Two brothers, *brothers*, SADAKICHI and SUEKICHI, and two sisters, HATSU GOTO and ASANO TAHARA, all in Japan.

Q. Are your parents living?

A. My mother only, CHIYOI INAMASU, at ARAKI MURA.

Q. How many brothers and sisters have you?

A. Two brothers, SATARO, 49 years old, and NENOKICHI, 47 years, and three sisters, KIKU, 46 years, FUSA SAKAI, 42 years, and TOME MAT-

SUEDA, 37 years, all in Japan.

Q. Are any of your or your husband's relatives deformed, or in any way unsound in mind or body, or have any of them ever been confined in a public institution? A. Not to my knowledge.

Q. Can you read and write? A. No.

Q. On which ship did you arrive and from what port?

A. On the SS. MONGOLIA, June 10, 1912, from Nagasaki, Japan.

Q. Who paid your passage?

A. My husband sent the money for it.

Q. What is your occupation? A. Weaver.

Q. Were you ever in the United States before?

A. Yes, I came to Hawaii 11 years ago with my husband. I stayed here five years and then went back to Japan. I have been there fully four years.

Q. Who went back to Japan with you four years ago?

A. I took with me my two sons MASATO and SHIGEYUKI. [54]

Q. Have either of these two sons ever returned to Hawaii? A. No.

Q. Was GIICHI or SUGI ever in this country?

A. No.

Q. Have you been engaged in weaving in Japan ever since you went there four years ago?

A. Yes, nothing but weaving.

Q. What wages did you receive as a weaver in Japan?

A. 75 sen a day to one sen, and boarded myself.

Q. What are your children doing in Japan?

A. GIICHI is a carpenter's apprentice and the others are going to school, except SHIGEYUKI, who is too young.

Q. Has your husband ever been back to Japan since he came here with you 11 years ago?

A. No.

Q. What did you do when you were in Hawaii?

A. I did plantation work at Lahaina, Maui.

Q. Do you remember the date on which you went back to Japan?

A. I cannot remember the date, but it was in the month of July, and on the SS. CHINA. I have forgotten the year.

Q. Why did you go back to Japan?

A. I wanted to see my children who were in Japan. My husband's parents also wanted to see me, and wanted to help me in the instruction of my children.

Q. When you first came to Hawaii did you expect to go back to Japan?

A. Yes. I expected to go back to Japan again.

Q. Have you notified any one of your arrival?

A. I sent a wireless message to my husband from the steamer telling him that I was coming.

Q. How much did you pay for it? A. 6 yen.

Q. How much money have you? A. \$5.00.

Q. Have you any further statement to make?

A. No.

Q. When you went back to Japan did you expect to return to Hawaii again? A. Yes.

Q. If you are landed now is it your intention to remain in Hawaii always, or do you expect to return

to Japan again?

A. I expect to stay here and work for ten years and then return to Japan again.

Q. Do all of your children expect to come to Hawaii sometime?

A. Yes, they all expect to come. Two of them GIICHI and SHIGYUKI are now at Nagasaki being treated for their eyes. When they are cured they will come to Hawaii.

Q. You have said that when you went to Japan four years ago you intended to return again to Hawaii. How long did you intend to stay in Japan?

A. One or two years.

Q. You have now stayed four years. Why did you not return sooner?

A. I waited for GIICHI to get through the grammar school.

her
TSURU X TOMIMATSU.
mark

Witness to mark:

T. KATSUNUMA.

Sworn and subscribed to before me this 19th day of June, 1912.

(Sgd.) EDWIN FARMER,
Immigrant Inspector.

The foregoing testimony has been translated by me to the affiant named therein, and before signing the same she acknowledged it to be a correct record and fully understood by her.

(Sgd.) TOMIZO KATSUNUWA,
Interpreter. [55]

Witness, alleged husband, sworn, testifies:

Q. Give your name and age.

A. KOTARO TOMIMATSU, 42 years old.

Q. What is the purpose of your visit here today?

A. I come to meet my wife, TSURU TOMIMATSU, who came on the SS. MONGOLIA, June 10.

Q. How old is she? A. 36 years.

Q. When were you married?

A. In 1894, in Japan.

Q. Were either of you ever married more than once? A. No.

Q. Was your wife ever in the United States before?

A. Yes, she came to Hawaii with me when I came in June, 1902, by the SS. HONG KONG MARU.

Q. Have you ever been back to Japan since that time? A. No.

Q. When did your wife go back?

A. In July, 1907, by the SS. CHINA.

Q. Did she go along?

A. Mr. MIURA, a friend of mine, took her back with my son MASATO.

Q. How many children have you?

A. Three sons, GIICHI, 16 years old, MASATO, 9 years, and SHIGEYUKI, 5 years about, and one daughter, SUGI, 15 years, all in Japan. MASATO was born in HAWAII, but the rest were born in Japan. SHIGEYUKI was born about December, 1907, after my wife went back to Japan.

Q. With whom are they staying in Japan?

A. I do not know. I should have to see my wife to find out. They have been staying with her.

Q. Have your wife and children ever been back to

Hawaii since they went away?

A. No, none of them.

Q. Are your wife's parents living?

A. Her mother only, Mrs. INAMASA, at ARAKI MURA, Fukuoka Ken, Japan.

Q. How many brothers and sisters has your wife?

A. She has two brothers and three sisters, but I do not know their names. They are all in Japan.

Q. Are your parents living?

A. Yes, DENHICHI and SATO TOMIMATSU, at MITSUMA MURA, Fukuoka Ken.

Q. How many brothers and sisters have you?

A. Three brothers, SADAKICHI, 45 years old, SUEKICHI, 38 years, and IKUJI, about 39 years, and two sisters, HATSU GOTO, 34 years, and ASANO TAHARA, 27 years, all in Japan.

Q. Are any of your or your wife's relatives deformed, or in any way unsound in mind or body, or have any of them ever been confined in a public institution? A. Not to my knowledge.

Q. Who paid your wife's passage to Hawaii?

A. I did.

Q. What has your wife been doing in Japan?

A. Farm work.

Q. What is your occupation?

A. I plant cane on contract at Puunene, Maui.

Q. About how much money do you make?

A. \$1.00 a day or more.

Q. How much money have you saved?

A. About \$400.00.

Q. Do you live in a camp?

A. Yes, I have one room.

Q. What will your wife do if she is landed?

A. Plantation work.

Q. What did she do before when she was in Hawaii?

A. Plantation work. We were on Lahaina Plantation, Maui, then.

Q. Do you expect to remain permanently in Hawaii, or do you expect to go back to Japan sometime to live?

A. I intend to go back to Japan, my native land, again.

Q. When you go back, do you expect to take your wife with you? A. Yes.

Q. Has that been your intention ever since you came to Hawaii?

A. Yes. After we saved money enough it has been my hope to go back to Japan. [56]

Q. When your wife went back to Japan was it your intention for her to come back again to Hawaii?

A. Yes. She intended to come back to this country after a short visit in Japan.

Q. How long did she intend to stay in Japan?

A. Two or three years. I intended to bring the children here after they had grown.

Q. Do you intend to bring all of your children to Hawaii? A. Yes.

Q. Why didn't they come with your wife?

A. I do not know. I want to talk about that with my wife.

Q. Have you any further statement to make?

A. I want to ask you to please let her land. Also

I am expecting my children, so let them come ashore also.

Q. You say your wife intended to stay in Japan two or three years. It has now been four or five years. Why did she not return sooner?

A. The children were too small.

Q. Have you received any message from your wife since her departure from Japan?

A. I received a letter from Japan, and a wireless message from her, from the boat.

Q. When did you receive the wireless message?

A. June 10.

Q. When did you receive the letter?

A. About two weeks before June 10.

Q. Why did you not come sooner?

A. I missed one boat and so could not come.

Q. Have you any further statement to make?

A. No.

(Sgd.) EDWIN FARMER,
Immigrant Inspector.

The foregoing testimony has been translated by me to the affiant named therein, and before signing the same he acknowledged it to be correct record and fully understood by him.

(Sgd.) TOMIZO KATSUNUMA,
Interpreter.

Order of Board Denying Applicant's Admission.

Case deferred to await the decision of the examining surgeon as to whether applicant is afflicted with disease.

Case of TSURU TOMIMATSU, 1-8, ex. SS. MONGOLIA, June 10, 1912.

Board reconvened June 20, 1912.

Applicant is certified by the examining surgeon of the U. S. P. H. & M. H. S., as being afflicted with TRACHOMA, a dangerous contagious disease.

EDWIN FARMER: The applicant in this case, according to the testimony, formerly lived in Hawaii, but went back to Japan about four or five years ago with the intention of again returning to Hawaii after an absence of two or three years in Japan. Her husband has been in Hawaii ever since he came to these Islands, ten or eleven years ago, with his wife. If applicant's intention of sometime returning to Hawaii no matter how many years she may have remained in Japan, her husband still being in Hawaii, makes her a resident of Hawaii, it would seem that the intention of both husband and wife to ultimately return to Japan to live would, according to the same reasoning, make them both residents of Japan. I therefore move the applicant be denied admission and returned to Japan, the country whence she came, this decision being based on the certificate of the examining surgeon that she is afflicted with a contagious disease, and that she be allowed to appeal to the Department on the question as to whether [57] or not she is a returning resident and therefore exempt from the Immigration Laws.

By Inspector MOORE: I second the motion.

HARRY B. BROWN: It is so ordered.

Applicant is informed that her return passage will be paid by the steamship company which brought her to Hawaii.

She is also informed of her right of appeal on the question of residence.

(Sgd.) HARRY B. BROWN,

(Sgd.) EDWIN FARMER,

(Sgd.) MERLIN J. MOORE.

**Exhibit "C" to Return to Writ of Habeas Corpus
[Notice of Appeal from Decision of Board of
Special Inquiry to Secretary of Commerce and
Labor].**

June 28, 1912.

R. L. Halsey, Esq.,

Inspector in Charge, U. S. I. S.,

Honolulu, Hawaii.

Dear Sir:

Having been notified that I have been denied admission to the United States at the port of Honolulu on my return here, I hereby notify you that I hereby and now appeal from the decision of the Board of Special Inquiry denying me admission to the Secretary of Commerce and Labor, at Washington. My attorney will file brief for me on this appeal.

Faithfully yours,

her
(Sgd.) TSURU X TOMIMATSU.
mark

Witness to mark:

TOMIZO KATSUNUMA. [58]

**Exhibit "D" to Return to Writ of Habeas Corpus
[Appellant's Brief on Appeal to Secretary of
Commerce and Labor].**

BEFORE SECRETARY OF COMMERCE AND
LABOR, WASHINGTON, D. C.

APPEAL FROM DECISION OF BOARD OF SPE-
CIAL INQUIRY, HONOLULU, HAWAII.

In the Matter of TSURU TOMIMATSU, Domiciled
Alien.

To the Honorable, the Secretary of Commerce and
Labor.

STATEMENT OF THE CASE.

From the testimony taken in this case it appears that the appellant herein, TSURU TOMIMATSU, was lawfully married to one KOTARO TOMIMATSU, in the Empire of Japan sometime during the month of December, A. D. 1895, and thereafter cohabited together as husband and wife, there being born of the marriage four children in all, two of them born in Japan, and two in the Territory of Hawaii; it further appears that this couple came here from Japan some 11 years ago, and went to live at Lahaina, Maui, where their two children were born, and lived there some years, making that place their home; that some four or five years ago, the wife, the appellant in this case returned to Japan, with her children, for the purpose of making a short visit, the husband, Kotaro Tomimatsu, remaining here at their home in Lahaina, and has been here ever since, now being located at Puunene, Maui, and engaged in business as a cane contractor. It appears that the wife's purpose in going to Japan some four or five years ago was for the purpose of placing the children in a Japanese school, and that the schooling of the children took longer than she expected since she has overstayed the time she intended to spend in Japan. At any rate she now returns here to her home and husband, [59] and had there not been some trouble with the Doctors in Japan would have brought with her their children, it appears that they

will now follow by a later boat. The Husband has never left the Territory since he first came here.

The Board of Special Inquiry at the United States Immigration Station at this port has treated this appellant as an alien immigrant and denied her re-admission on her return to her home and domicile here, from which finding and decision the said TSURU TOMIMATSU has appealed to your Honor, and now filed this, her brief on appeal.

ARGUMENT.

No question is made in this case but that the appellant herein, Tsuru Tomimatsu, was lawfully admitted to the United States some 11 years ago, when she first came here with her husband, and no question is made but that her husband is lawfully in the United States; the appellant therefore does not come within the ruling in the case of *Ex parte Patterson*, 166 Fed. 536, where it appeared that the residence of the alien in the United States was during minority, her parents being in a foreign country, and that she never did in fact acquire a domicile here; neither does she come within the ruling in the case of *FUNARO vs. WATCHORN*, 164 Fed. 152, a New York case, where it appeared that the alien had not been lawfully admitted in the first place, and therefore could not acquire a domicile here. The contrary is the case here, the appellant was lawfully admitted here some 11 years ago when she arrived with her husband, and together with her husband established their domicile here.

The real question, and the only question, at issue

in this case is whether this appellant is a returning domiciled alien. A domicile is that place in which a person has voluntarily fixed his abode, not for a mere special or temporary purpose, but with a present intention of making it his permanent home, 14 CYC. 833. [60] But the appellant in this case is a married woman who is not living separate and apart from her husband under any judicial decree of divorce or separation, nor has she been compelled to leave him because of brutal treatment, nor is there shown to be a partial or total incapacity on the part of the husband to acquire a domicile. Such being the case, the domicile of this appellant follows that of her husband.

“The law fixes the domicile of the wife by that of the husband and denies to her during cohabitation the power of acquiring a domicile of her own separate and apart from him.” 14 CYC. 846.

Atherton vs. Atherton, 181 U. S. 155.

Cheely vs. Clayton, 110 U. S. 701.

Chambers vs. Prince, 75 Fed. 176.

Burnham vs. Rangeley, 4 Fed. cases, 2176.

The query then comes, what is the domicile of the husband KOTARO TOMIMATSU? From the decision and finding of the Board of Special Inquiry in this case, it appears that they have dealt with this case on the assumption that KOTARO TOMIMATSU never established a domicile here, basing it, I presume, on the following two questions and answers: Record, page #4.

“Do you expect to remain permanently in Hawaii, or do you expect to go back to Japan sometime to live? A. I intend to go back to Japan, my native land, again.”

“Has that been your intention ever since you came to Hawaii? A. Yes, after we saved money enough it has been my hope to go back to Japan.”

And in this connection I desire to draw attention to the following: Record, page #4.

“Do you intend to bring all of your children to Hawaii? A. Yes.”

(Above quotations taken from the testimony of Kotaro Tomimatsu.)

The last question and answer show a present intention of making this Territory his permanent home, his home and his family's home. All that the two former questions and answers show are a floating intention to return to Japan, his domicile of origin at some indefinite period of time in the future, which is not [61] sufficient to enable him to retain his original domicile in Japan.

Domicile is not established by the proof of one or two facts.

“It depends not upon proving particular facts, but whether all the facts and circumstances taken together tending to show that a man has his home or domicile in one place overbalance all the like proofs tending to show it in another.”

Abington vs. North Bridgewater, 23 Pick. 170.

On the one hand, we have the establishment of a home here, a continuous residence here for 11 years,

the wife returning here after a temporary visit abroad, the bringing of the children in the very near future, the statement of the appellant that she expects to be here for 10 years longer at least, in fact the establishment of a permanent home and place of abode here, and on the other hand, we have a declaration on the part of KOTARO TOMIMATSU that there is a floating intention to return to Japan at some future indefinite period of time. But the authorities do not stop here; they go farther:

In *Johnson vs. Smith*, 43 Mo., at page 501, the Court said: "A man's domicile is where he has fixed his ordinary dwelling without a present intention of removal, and that domicile may be changed to another notwithstanding the party on his departure may cherish a secret purpose of returning at some indefinite time in the future. Nor does the intent at the time of removal necessarily decide anything since the party's intentions may change at a subsequent period. He may come to a different mind and fix his dwelling in another locality without any present purpose of leaving it and thus become domiciliated there notwithstanding his original purposes."

In *Preston vs. Culbertson*, 58 Calif., at page 210, the Court said: "That he intended at some indefinite time in the future to remove (return) to Poverty Hill in Jamestown precinct did not make the latter place his residence."

Plaintiff was born in New York, removed to New Jersey in 1868, resided there until his wife died in 1880, then took his children to Scotland. On return

to the United States located in New Jersey, lived there, boarding until 1884, when he went to St. Louis where he engaged as a contractor, entering into a partnership with the defendant. Then closed his business in New Jersey. After living in St. Louis 2 years he sued in the Federal Court for a dissolution of the partnership, alleging that he was a citizen of New [62] Jersey, testifying that his residence in Missouri was merely temporary and it was not his purpose to give up his residence in New Jersey; HELD, that the facts set out did establish residence in Missouri, and that they were not overcome by a secret purpose to return to New Jersey when his business in Missouri was cleaned up, at some indefinite future period. Plea to jurisdiction sustained and bill dismissed. *Wright vs. Schneider*, 32 Fed. 705.

“The place to which a person has removed with the intent to remain there an indefinite time and has his place of present domicile is his place of domicile although he may entertain a floating intention to return at some future period.”
Harris vs. Firth, 11 Fed. Cases #6120.

A citizen of Massachusetts removed with his family to another State retaining no dwelling place in Massachusetts, though retaining his place of business here and intending to retain his domicile here and to return here at some future indefinite period of time, has NO DOMICILE IN MASSACHUSETTS:

Holmes vs. Greene, 75 Mass. 299, and at page 300-301, the Court said in part:

“It is true that in cases where the domicile of a party is in issue evidence of his intend may

have an important and decisive bearing on the question, but it must be in connection with other facts to which the intent of the party gives efficacy and significance. Such is the case where a person has two dwelling-houses in different towns in each of which he lives with his family an equal portion of the year. *Harvard College vs. Gore*, 5 Pick. 370. So, too, where a person leaves the country to be absent for purposes of business or pleasure for an indefinite period retaining his house and furniture in the place of his previous residence. *Sears vs. Boston*, 1 Met. 250. But no case can be found where the domicile of party has been made to depend on a bald intent unaided by other proof. The *factum* and *animus* must concur in order to establish domicile. *Harvard College vs. Gore*, 5 Pick. 570. The latter may be inferred from proof of the former, but evidence of a mere intent cannot establish the fact of domicile.

One who is absent from and resides out of the commonwealth retaining no dwelling-house or boarding place here, though intending to return at some future indefinite time, has no domicile here.

Sleeper vs. Paige, 81 Mass. 349.

If a person has actually removed to another place with the intention of remaining there an indefinite time and has a place of fixed domicile that place is to be deemed his place of domicile, notwithstanding he may entertain a floating intention to return at some future period.

Anderson vs. Anderson, 42 Vt. 350.

Fram vs. Thorman, 102 Wisc. 653.

From these authorities there can be no question but that the husband Kotaro Tomimatsu, who came here 11 years ago, is still living here, and whose further stay here is indefinite and who has a place of fixed domicile at Puunene, Maui,—is domiciliated here, and it being established by unbroken authority that the domicile of the wife follows that of the husband in a case such as this [63] one, the domicile of the wife therefore is in the Territory of Hawaii. The major question being disposed of and it having been shown that this woman, the appellant herein, is a returning domiciled alien, is she amenable to the United States Immigration Laws on her return here from a visit abroad? I believe, that under the following authorities she is clearly, and beyond a doubt, entitled to a landing on her return here:

Rogers vs. United States, 152 Fed. 346.

In re Buchsbaum, 141 Fed. 221.

United States vs. Aultman, 143 Fed. 922.

In re Panzara, 51 Fed. 275.

In re Martorelli, 63 Fed. 437.

In re Maiola, 67 Fed. 114.

United States vs. Sandrey, 48 Fed. 550.

In re Ota, 96 Fed. 487.

United States vs. Burke, 99 Fed. 895.

In re Di Simmons, 108 Fed. 942.

Mofitt vs. United States, 128 Fed. 375.

United States vs. Nakashima, 160 Fed. 843.

The latter case, *United States vs. Nakashima*, arose in this jurisdiction, and was decided both in the Dis-

trict Court here, and in the Circuit Court of Appeals of the Ninth Circuit, in favor of the returning domiciled alien, and against the United States, and settles the law in this jurisdiction. Under the law as laid down in the Nakashima case, this appellant is clearly and beyond a doubt entitled to a landing here now on her return.

It may be further noted that the Department by its own rules has recognized and follows the case of *U. S. vs. Nakashima*, 160 Fed. 843, statistical rule VIII, providing:

“Alien residents and aliens residing abroad coming to the United States for a temporary trip, shall be classed as non-immigrant aliens.

. . . ”

It having been shown that the appellant here established a domicile in the United States, and was a domiciled alien in 1907 when she left this country for a temporary visit to Japan, intending to return here again to her husband, that it is her intention to bring all of her children here to live with herself and her [64] husband, and it having been further shown that the domicile of the husband of appellant has been in the United States for and during the last 11 years and still continues, and even though the appellant in fact intended to abandon her domicile here by her return to Japan in 1907 (and I submit there was no abandonment by this act), she did not have the power to do so; her domicile following that of her husband, and under the authorities cited, even though the appellant and her husband Kotaro intend at some indefinite future period to return to Japan,

such bald intent is not sufficient to defeat the domicile here, established by their past acts, and continued by their present contemplated acts.

I submit, therefore, that beyond all question the appellant is a returning domiciled and non-immigrant alien, and as such entitled to a landing.

Respectfully submitted,

TSURU TOMIMATSU,

By GEO. S. CURRY,

Her Attorney.

Dated at Honolulu, Hawaii, June 25, 1912.

[Endorsed]: No. 46. (Title of Court and Cause.)
Return of Richard L. Halsey to Writ of Habeas Corpus. Filed Sept. 18, 1912. A. E. Murphy, Clerk.
By (Sgd.) F. L. Davis, Deputy Clerk. [65]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

In the Matter of the Petition of TSURU TOMIMATSU for a Writ of Habeas Corpus.

Demurrer.

And now comes the above-named petitioner, Tsuru Tomimatsu, by her attorney, Geo. S. Curry, and says that the return of Richard L. Halsey to the writ of habeas corpus issued herein, and the matters and things therein contained and set forth, in manner and form as the same are pleaded and set forth in said return, are not sufficient in law to discharge the writ of habeas corpus herein.

WHEREFORE PETITIONER PRAYS that the writ of habeas corpus heretofore issued herein be

sustained and that petitioner be discharged.

TSURU TOMIMATSU,

Said Petitioner.

By (Sgd.) GEO. S. CURRY,

Her Attorney.

Dated, Honolulu, Hawaii, September 17, 1912.

[Endorsed]: No. 46. (Title of Court and Cause.)
Demurrer to Return. Dated, Honolulu, Hawaii,
September 18, 1912. Filed September 18th, 1912.
A. E. Murphy, Clerk. By (Sgd.) F. L. Davis,
Deputy Clerk. [66]

Order Allowing Appeal (Minute).

From the Minutes of the United States District
Court, Vol. 8, Page 270, Saturday, September 28,
1912.

[Title of Court and Cause.]

On this day came Mr. Geo. S. Curry, counsel for
the above petitioner, and Mr. R. W. Breckons, United
States Attorney, who appeared on behalf of the re-
spondent herein, Richard L. Halsey, and this cause
was called for hearing on petition for appeal. There-
after due hearing having been had on said Petition,
the Court signed an order allowing said appeal to the
Ninth Circuit Court of Appeals. [67]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Application of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

Petition for Appeal.

To the Honorable SANFORD B. DOLE, Judge of
the Above-entitled Court:

THE UNITED STATES OF AMERICA, by its
attorney, ROBERT W. BRECKONS, conceiving
itself aggrieved by the order and judgment made and
entered on the 17th day of September, A. D. 1912, in
the above-entitled proceeding, does hereby appeal
from the said order and judgment to the Circuit
Court of Appeals for the Ninth Circuit, and files here-
with its assignment of errors intended to be urged
upon appeal, and it prays that its appeal may be
allowed, and that a transcript of the record of all pro-
ceedings and papers upon which said order and judg-
ment was made, duly authenticated, may be sent to
the Circuit Court of Appeals for the Ninth Circuit
of the United States.

Dated this 28th day of September, A. D. 1912.

(Sgd.) ROBT. W. BRECKONS,

United States Attorney.

Received a copy of the above petition.

TSURU TOMIMATSU.

By (Sgd.) GEO. S. CURRY,

Her Attorney. [68]

[Endorsed]: No. 46. (Title of Court and Cause.)
Petition for Appeal. Filed Sep. 28, 1912. A. E.
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy
Clerk. [69]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Application of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

Order Allowing Appeal.

Upon application and motion of ROBERT W. BRECKONS, United States Attorney for the Territory of Hawaii:

IT IS HEREBY ORDERED that the petition for appeal heretofore filed herein by the United States of America be, and the same is hereby granted; and that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and judgment heretofore, on September 17th, 1912, filed and entered herein, be and the same is hereby allowed, and that a transcript of the record of all proceedings and papers upon which said final order and judgment was made, duly certified and authenticated, be transmitted, under the hand and seal of the Clerk of this Court, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, at San Francisco, in the State of California.

Dated this 28th day of September, A. D. 1912.

(Sgd.) S. B. DOLE,

Judge U. S. District Court.

Received a copy of the above order.

TSURU TOMIMATSU.

By Her Attorney,

(Sgd.) GEO. S. CURRY.

[Endorsed]: No. 46. (Title of Court and Cause.)
Order Allowing Appeal. Filed Sep. 28, 1912. A. E.
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy
Clerk. [70]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Application of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

Assignment of Errors.

And now comes the United States of America, by ROBERT W. BRECKONS, its attorney, and says that in the record and proceedings in the above-entitled matter there is a manifest error and that the final record and judgment, made and entered in said matter on the 17th day of September, A. D. 1912, is erroneous and against the just rights of the said United States, in this, to wit:

First. The above-entitled court erred in granting the application for the writ of habeas corpus herein.

Second. The court erred in holding that the provisions of the Act of Congress of February 20, A. D. 1907, "To regulate the immigration of aliens into the United States," as amended by the Act of March 26, A. D. 1910, applied only to aliens coming to the United States for the first time.

Third. The court erred in not holding that the aforesaid Act of February 20, A. D. 1907, as amended by the Act of March 26, A. D. 1910, did not apply to aliens formerly domiciled in the United States and later returning thereto.

Fourth. The court erred in holding that it had jurisdiction to issue a writ of habeas corpus in cases where the appropriate immigration officers had decided that an alien had left the United States of America without intention to return thereto. [71]

Fifth. The court erred in determining that it had jurisdiction to review the action of a Board of Special Inquiry, or of the Department of Commerce and Labor, in deciding whether or not TSURU TOMIMATSU was one of the classes referred to in the statutes of the United States relative to immigration.

Sixth. The court erred in holding that the question of whether or not an alien who had left the United States had done so with an intention of returning was a question of law and not of fact.

Seventh. The court erred in holding that the said TSURU TOMIMATSU should be discharged.

Eighth. The Court erred in making and entering the final order and judgment of September 17, 1912, in favor of said TSURU TOMIMATSU and against the United States upon the pleadings and record in the above-entitled matter.

Ninth. The court erred in making, rendering and entering said final order and judgment of September 17, 1912, in this, that said final order and judgment was and is contrary to law, and to the facts stated in the pleadings and record in the above-entitled matter.

Tenth. The court erred in other particulars, appearing upon the record.

Whereas, by the law of the land, the said application for a writ of habeas corpus should have been denied, and the said writ of habeas corpus should

have been discharged, and the said applicant and petitioner should have been remanded to be dealt with according to law.

And the aforesaid United States of America now prays that the order and judgment, of September 17, 1912, hereinabove mentioned may be reversed, annulled, and held for naught, and that it, said United States, may have such other and further relief as may be [72] proper in the premises.

Dated this 28th day of September, A. D. 1912.

(Sgd.) ROBT. W. BRECKONS,
United States Attorney.

Received a copy of the above assignment of errors.

TSURU TOMIMATSU,
By Her Attorney.

(Sgd.) GEO. S. CURRY.

[Endorsed]: No. 46. (Title of Court and Cause.)
Assignment of Errors. Filed Sep. 28, 1912. A. E.
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy
Clerk. [73]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Application of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

Citation on Appeal.

United States of America,—ss.

The President of the United States, to TSURU
TOMIMATSU, Greeting:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Appeals

for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal, filed in the Clerk's office of the United States District Court for the Territory of Hawaii, wherein the United States of America is appellant and you, TSURU TOMIMATSU, are appellee, to show cause, if any [74] there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 28th day of September, A. D. 1912, and of the Independence of the United States the one hundred and thirty-seventh.

S. B. DOLE,

Judge U. S. District Court, District of Hawaii.

[Seal]

Attest: A. E. MURPHY,

Clerk U. S. District Court.

By F. L. Davis,

Deputy Clerk.

Received a copy of the within citation.

TSURU TOMIMATSU.

By GEO. S. CURRY,

Her Attorney.

[Endorsed]: No. 46. (Title of Court and Cause.)
Citation on Appeal. Filed Sep. 28, 1912. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [75]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Application of TSURU TOMI-
MATSU for a Writ of Habeas Corpus.

Praeceptum for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Petition for a writ of habeas corpus; filed July 25, 1912.
2. Order to show cause; made July 26, 1912.
3. Return of Richard L. Halsey to order to show cause; filed July 31, 1912.
4. Order for issuance of writ, and decision thereon; made September 17, 1912.
5. Writ of habeas corpus, and return of service; filed September 17, 1912.
6. Return of Richard L. Halsey to writ of habeas corpus; filed September 18, 1912.
7. Demurrer of applicant; filed September 18, 1912.
8. Judgment discharging applicant; made September 18, 1912.
9. Petition for appeal; filed September 28, 1912.
10. Assignment of errors; filed September 28, 1912.
11. Order allowing appeal; filed September 28, 1912.

12. Citation; filed September 28, 1912.
13. All minute entries in above-entitled cause.
14. This praecipe. [76]

Said transcript to be prepared as required by law and the rules of this Court, and the rules of the United States Circuit of Appeals for the Ninth Circuit, and filed in the office of the Clerk of said Circuit of Appeals at San Francisco, before the 28th day of October, A. D. 1912.

THE UNITED STATES OF AMERICA.

By (Sgd.) ROBT. W. BRECKONS,
United States Attorney.

[Endorsed]: No. 46. (Title of Court and Cause.)
Praecipe for Transcript. Filed Sep. 30, 1912. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [77]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

No. 46.

In the Matter of the Petition of TSURU TOM-
IMATSU, for a Writ of Habeas Corpus.

United States of America,
District of Hawaii,—ss.

[Certificate of Clerk U. S. District Court to Record,
etc.]

I, A. E. Murphy, Clerk of the District Court of the United States for the Territory of Hawaii, do hereby certify that the foregoing pages, numbered from 1 to 78, inclusive, to be a true and complete transcript of the record and proceedings had in said

court in the matter of the Petition of Tsuru Tomimatsu for a writ of habeas corpus, as the same remains of record and on file in my office, and I further certify that I hereto annex the original citation on appeal and order extending time to transmit record on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is \$20.70, and that said amount has been charged by me in my account against the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 31st day of October, A. D. 1912.

[Seal] A. E. MURPHY,
Clerk, United States District Court, Territory of
Hawaii. [78]

[Endorsed]: No. 2197. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Tsuru Tomimatsu, Appellee. In the Matter of the Petition of Tsuru Tomimatsu for a Writ of Habeas Corpus. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Filed November 8, 1912.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.